

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of KAZMINE HURT, Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

SHARON JOHNSON,

Respondent-Appellant.

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UNPUBLISHED

March 11, 2008

No. 279368

Gogebic Circuit Court

Family Division

LC No. 06-000007-NA

Before: Fitzgerald, P.J., and Smolenski and Beckering, JJ.

PER CURIAM.

Respondent appeals as of right from an order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

This Court reviews a trial court's decision to terminate parental rights for clear error. MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). If the trial court determines that petitioner established the existence of one or more statutory grounds for termination by clear and convincing evidence, the trial court must terminate respondent's parental rights unless it determines that to do so is clearly not in the child's best interests. *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000).

The trial court did not err in finding that MCL 712A.19b(3)(c)(i) (conditions continue to exist), (g) (ability to provide proper care and custody), and (j) (reasonable likelihood of harm if returned) were established by clear and convincing evidence. The minor child was removed from respondent's care on an emergency basis after an incident in January 2006 when respondent, while intoxicated, repeatedly picked up and threw her son down while calling him the "B" word, struck him multiple times in the face with an open and closed hand causing him to suffer a bloody lip, and elbowed her pregnant daughter in the stomach and side when she tried to intervene, for which respondent was incarcerated and charged criminally. It was also alleged that respondent had been increasingly abusing alcohol. The minor child, who was eight years old at the time of the termination trial, had significant emotional and behavioral issues and was fearful of men. After he was taken into temporary care, it was discovered that the child had grown up in an extremely violent environment that included drugs and guns, and he had once witnessed someone being shot.

Respondent agreed to submit to daily preliminary breath tests (PBTs) to address the issue of alcohol abuse, and began these tests in February 2006. She was also participating in substance abuse counseling at that time. Respondent missed 165 PBTs over the course of 345 days, or approximately half of those required, and offered various excuses for why she was unable to get to the police station, including incapacitation due to a broken leg and travel to Milwaukee to deal with a custody and guardianship case involving her other minor son. Her participation in other personal activities, the amount of time she was actually required to be in Wisconsin for custody issues, and the sheer volume of her noncompliance rendered dubious the legitimacy of her excuses for why she missed so many tests. Of the PBT's that respondent did take, she tested positive twice. Further, respondent had not continued with her substance abuse counseling, claiming that she needed another referral and could not get one.

Respondent argues on appeal that she was unaware of the requirements of the parent agency agreement in the beginning because she did not get a copy of it for three months. The record is clear that respondent had begun many of the services in February 2006, so it is obvious that she was aware of what she was supposed to do. Respondent also argues that she was unaware of the consequences of not complying with the parent agency agreement, including failure to undergo the daily PBTs, and that she was not reprimanded for her noncompliance. At the time respondent was required to comply with the terms of the parent agency agreement, the minor child had been removed from her care and respondent was required to report at a review hearing on a periodic basis with regard to how she was progressing. At the permanency planning hearing, it was recommended that a petition be filed for noncompliance. Clearly, respondent should have been aware of the consequences of her noncompliance with the parent agency agreement.

Respondent was also required to participate in parenting classes and anger management sessions, and to visit the minor child on a supervised basis. She argues that she did not receive any services to assist her in parenting the minor child with all of the disorders that he had been diagnosed with after he was removed from her care. Respondent was unable to comply with even the most basic of parenting skills that she was directed to do and for which she received services. She did not acknowledge that she hurt the minor child, did not apologize to him when directed to do so, did not focus on his needs, spent parenting time and telephone conversations talking about her own needs, did not understand or acknowledge that the violent environment he grew up in caused significant emotional issues for him, and did not make him a priority in her life. Respondent placed the blame on others, and did not make any significant effort to address the basic parenting issues that were identified after the minor child was placed in temporary care even when services were offered.

At the time that the petition for termination was filed, respondent was not allowed unsupervised visitation. Petitioner did not feel that the minor child would be safe if he were allowed unsupervised visitation with respondent because of the parenting behavior that respondent had exhibited. Respondent argues that she was allowed only limited parenting time, yet she did not take advantage of the parenting time she was allowed. She was late to visits and missed visits because she either forgot or was out of town. The parenting time that respondent did take advantage of was difficult for the minor child because respondent focused on her needs rather than the needs of the minor child. She was not allowed unsupervised parenting time with

the minor child even after a year because it was not felt that the minor child would be safe in her care based on her behavior in the supervised visits.

Respondent argues that she should be given credit for the changes she did make. She moved away from Milwaukee to Ironwood to provide the minor child with a safe environment, and stated that she no longer had contact with the minor child's father, who was living in Milwaukee. This ignores the evidence that respondent spent a great deal of time in Milwaukee where her other child was involved in custody/guardianship proceedings. The amount of time she spent in Milwaukee was much greater than the amount of time she needed to be there for court hearings and visitation. In fact, respondent did not appear for the first day of trial in this case and stated on the record via a telephone conference call that she was in Milwaukee for a court hearing. When questioned about this under oath, she stated that she needed to be there for a hearing involving visitation. Petitioner testified, however, that the caseworker in Milwaukee indicated that respondent did not have a court hearing in Milwaukee on that day, and she did not visit with her other child during her trip. Respondent did not understand that the minor child's issues were a result of the environment he was raised in, and felt that he would be fine if he could come home, claiming that the issues he was suffering from were the result of living in foster care with a Caucasian family.

Given the totality of the circumstances, the trial court did not clearly err in determining that conditions that led to the adjudication continued to exist, there was no reasonable expectation that the respondent would be able to provide proper care and custody for the minor child, and there was a reasonable likelihood that he would be physically or emotionally harmed if returned to her.

The trial court also did not err in its best interests determination. MCL 712A.19b(5). There was a bond between respondent and the minor child and they loved each other. However, two therapists who treated the minor child testified that he was significantly emotionally scarred from the environment in which he was raised. They believed that, at this point, he was still "saveable," but the child required an environment that was extremely structured, stable, safe, and loving, and he needed this environment soon. The trial court was required to look at what was in the minor child's best interests. Respondent would not be able to provide the environment the child needed within a reasonable time, and the court did not err in terminating her parental right.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Michael R. Smolenski  
/s/ Jane M. Beckering